

Exhibit 3

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(SOUTHERN DIVISION - SANTA ANA)

NETLIST, INC.,) CASE NO: 8:20-cv-00993-MCS-ADS
)
Plaintiff,) CIVIL
)
vs.) Los Angeles, California
)
SAMSUNG ELECTRONICS CO., LTD.,) Monday, February 5, 2024
)
Defendant.) (11:00 a.m. to 11:27 a.m.)

HEARING RE:

MOTION TO STAY CASE PENDING TRIAL
IN THE EASTERN DISTRICT OF TEXAS [DKT.NO.344];

MANDATE ISSUED FROM THE 9TH CCA ON 11/9/23;

MOTION FOR PARTIAL SUMMARY JUDGMENT
AS TO CONTRACT INTERPRETATION [DKT.NOS.356,379];

MOTION TO SUPPLEMENT THE RECORD [DKT.NO.358]

BEFORE THE HONORABLE MARK C. SCARSI,
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE PAGE 2

Court Reporter: Recorded; CourtSmart

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1 Los Angeles, California; Monday, February 5, 2024; 11:00 a.m.

2 (Call to Order)

3 **THE COURT:** Please have a seat.

4 **THE CLERK:** Calling Item Number 3, SACV 20-993,
5 Netlist Inc. v. Samsung Electronics Co. Ltd.

6 Counsel, state your appearances please.

7 **MR. ASHLEY:** Good morning, Your Honor. Matt Ashley,
8 counsel for Netlist.

9 **THE COURT:** Good morning.

10 **MR. ASHLEY:** With me today are my colleagues, Jason
11 Sheasby --

12 **THE COURT:** Good morning.

13 **MR. ASHLEY:** -- Michael Harbour --

14 **THE COURT:** Good morning.

15 **MR. ASHLEY:** -- Isabella Chestney.

16 **THE COURT:** Good morning.

17 **MR. ASHLEY:** And we also have some representatives
18 from Netlist today; two members of in-house, Eric Lucas and
19 Jayson Sohi.

20 **THE COURT:** Good morning.

21 **MR. ASHLEY:** And then Netlist CEO Chuck Hong.

22 **THE COURT:** Good morning.

23 **MR. ASHLEY:** Plan was for me to argue the Motion for
24 Summary Judgment and Mr. Harbour to argue the Motion to Stay,
25 Your Honor.

1 **THE COURT:** Thank you.

2 **MR. YODER:** Good morning, Your Honor. Mike Yoder for
3 Defendants, with my colleagues, Marc Feinstein and Amy Lucas.

4 **THE COURT:** Good morning.

5 **MR. YODER:** And we have client representatives here
6 as well, Your Honor.

7 **THE COURT:** Okay, thank you.

8 **MR. YODER:** And I would be arguing the summary
9 judgment issues; and if we go off into other directions,
10 Mr. Feinstein or Ms. Lucas might wish with the Court's permission.

11 **THE COURT:** Great. Thank you very much.

12 Thank you and thank you everybody for being here. I
13 know the weather could be challenging for some so
14 congratulations on making it.

15 We've got a number of things to discuss. I've
16 actually read all the papers, I've been through everything so I
17 think I have got a good handle on where we are.

18 What I just wanted to briefly touch on is whether
19 there's anything new in Texas from the time the papers have
20 last been filed or are things still proceeding at pace in Texas
21 with the trial in April, on April 15th?

22 **MR. ASHLEY:** Yes, Your Honor. The trial is still set
23 for April 15th. And the most recent activity is that Samsung
24 has filed a motion for summary judgment on its license defense,
25 at least that portion which goes to the scope of the license.

1 So now that's pending before the Eastern District, as is
2 Netlist's motion for summary judgment on the entirety of the
3 license defense, both the scope and the issue of the
4 termination.

5 **THE COURT:** And has there been a hearing date set for
6 those motions yet?

7 **MR. ASHLEY:** I believe it'll be set for the pretrial
8 conference March 11th. I think that's how Judge Gilstrap
9 normally does it.

10 **THE COURT:** Okay.

11 **MR. YODER:** And if I might, Your Honor?

12 **THE COURT:** Yes.

13 **MR. YODER:** We filed on Friday a Notice of
14 Supplemental Authority relevant to the motion to stay. It was
15 filed Friday because up until then it was not a matter of
16 public record. There had been some challenges getting
17 agreed-upon redactions in order to make the document public.
18 But it's a report and recommendation by the discovery referee,
19 Magistrate Judge Folsom, in the Eastern District of Texas case
20 number two, in which Judge Folsom found that he was clear in
21 his mind that Judge Gilstrap was not going to address the
22 issues before Your Honor; and because of that, his
23 recommendation was to Judge Gilstrap that discovery on license,
24 breach and termination issues not be allowed in that action.

25 **THE COURT:** Judge Folsom's a discovery referee now?

1 **MR. YODER:** Correct, Your Honor.

2 **THE COURT:** I --

3 **MR. YODER:** There's a smile there. I'm wondering.

4 **THE COURT:** I spent a lot of time in the Eastern
5 District of Texas and so I'm very familiar with Judge Folsom
6 and Judge Gilstrap, Judge Ward, so yeah.

7 Okay. So let me give you my thoughts and then I can
8 hear from the parties.

9 And so obviously, we've had a little bit of history
10 here, right? We had a summary judgment motion. The Court
11 ruled that the language in the contract was unambiguous. And
12 so construing, according to the Court's understanding of the
13 law, since the Court viewed the language as unambiguous, the
14 Court was not allowed to look at extrinsic evidence and so the
15 Court granted summary judgment on that basis.

16 Then we had a damages trial on the breach of
17 contract, assuming the contract was breached, what are the
18 damages? And so we had a damages trial on that.

19 My understanding of what the Ninth Circuit said is
20 that although the language might not look ambiguous, if you
21 look at the language in conjunction with the whole agreement,
22 it could be ambiguous and so the Court was to look to see --
23 the Court -- it was proper for the Court to look at extrinsic
24 evidence.

25 I've gone through and looked at the extrinsic

1 evidence that Samsung has put forward and I looked at both
2 summary judgment motions. And where I'm left is that I
3 understand the arguments on both sides but I think that the --
4 whether the extrinsic evidence or how the extraneous evidence
5 impacts the interpretation of the language, calls into question
6 fact issues that I think are more appropriately decided by a
7 jury, not decided by the Court on summary judgment.

8 And so where I think we need to go in this case is to
9 move forward with a jury trial on the issues of, did Samsung
10 breach the contract? Is it appropriately construed by the jury?
11 And if so, is that breach material? Those, I think, are jury
12 questions that should go to a jury here.

13 I don't think it's appropriate to stay this matter
14 pending what's happened in the Eastern District of Texas. I
15 think that the matter is firmly before this Court. The -- this
16 Court's obligation I think is to resolve the matter, not to
17 wait for the Eastern District of Texas to do it.

18 And if I was in Judge Gilstrap's position, I would
19 appreciate this Court resolving the matter because I don't
20 think that had I been in his position, I wouldn't want to move
21 forward with spending time and effort in a matter where it
22 seems like the issue is firmly before another court. So I'm
23 not inclined to stay the case.

24 So what I would propose to the parties is, let's just
25 go forward and try these issues. I can -- we can start a trial

1 in -- and I don't think this is going to be a particularly long
2 trial but we could actually get this trial in before your April
3 15th date.

4 What I would propose to the parties is we have the
5 trial on March 26th. And again, I think because we're dealing
6 with contract interpretation issues, we don't have damage
7 issues because those have already been decided. We're dealing
8 with a limited record because we're looking at what was the
9 intent of the parties when they entered into this agreement?
10 And so my proposal to the parties is that we have the trial the
11 end of March, March 26th. We could do it -- let's see here.
12 If we had the trial on the 26th, I don't see any reason why --
13 we could select a jury in the morning, we could start to hear
14 opening arguments in the afternoon, we could hear testimony on
15 Wednesday and Thursday and you know probably would get to the
16 jury by Friday. At the very least, the jury would be able to
17 resolve it I would think on the 1st or 2nd of April which would
18 allow you to have some clarity before your trial. So those are
19 the Court's thoughts.

20 And so let me hear from the parties on what you think
21 of that, starting with the Plaintiff.

22 **MR. HARBOUR:** Thank you, Your Honor.

23 So I appreciate Your Honor's statement that you're
24 not inclined to stay and but I wanted to address a few issues
25 with respect to the stay and why I think it particularly makes

1 sense here.

2 Samsung largely doesn't dispute that the Landis
3 factors that the Ninth Circuit uses to determine whether a stay
4 is appropriate would weigh strongly in favor of a stay here.
5 And I think the main issue is that as we explained in the
6 briefing is I think it would benefit a jury to have the full
7 case in front of them, both the license scope issue and the
8 issue about breach and termination. Those issues both go to
9 the same clauses of the contract, they go to the same evidence,
10 they go to the same witness testimony in a lot of respects.
11 And so under I think well-established precedent, courts
12 generally prefer comprehensive resolution of matters. I think
13 the reason for that that's particularly acute here is you could
14 have parties arguing one thing to the Texas jury in April and
15 another thing to this jury in March, or whenever the trial ends
16 up being set, and we have I think a risk of inconsistency
17 there, especially given as Samsung as we've argued in the
18 briefing, they've taken different positions on the scope of
19 different clauses of the contract before the Ninth Circuit
20 where they've focused on the fact that it's a narrow
21 interpretation is warranted for clauses of the JDLA (phonetic)
22 that don't expressly mention joint development, they are
23 nonetheless should be read as implicitly limited joint
24 development. Yet in Texas, when it comes to the scope of the
25 license, their position is the license is broad, not at all

1 limited joint development.

2 Now Samsung disputes that they said anything
3 inconsistent. We think that's incorrect, the record speaks for
4 itself, but I think it's undeniable that whenever you have one
5 jury deciding one issue and another jury deciding another issue
6 relating to the exact same license defense and the exact same
7 contract, that there is a significant risk of inconsistent
8 verdicts and also a significant risk of just duplication of
9 effort.

10 And given that the entire case is before Judge
11 Gilstrap, both the patent infringement part and both aspects of
12 the license defense, we think it makes more sense to go forward
13 in Texas in April, rather than have two separate trials.

14 **THE COURT:** I got that from the briefs and I
15 understand that but this -- the case isn't all together,
16 unfortunately. It would have been better if everything was
17 before one court at the onset. And so based on the way the
18 cases were filed, it seems like that an orderly way to proceed
19 would be for this case to resolve the issues before it and then
20 the Texas trial can proceed based on a set determination from
21 this case. And so I definitely understand the issues and I
22 know it can be frustrating when it seems like you believe that
23 somebody's making two different arguments in two different
24 forums but the only things before this Court are the issues
25 that were brought before it by Netlist in the original

1 complaint.

2 And I think that my understanding of what Judge
3 Gilstrap would appreciate -- as I would if I was in his
4 position -- would be for us in this court to resolve the case
5 and then this Court's done and then Judge Gilstrap can do
6 whatever he feels is appropriate in his case.

7 I don't know that -- I think that the fact that we do
8 have the potential to squeeze this in before his trial is to
9 the benefit of the court in Texas. I mean often we wouldn't
10 have this flexibility but we appear to do now in our schedule.

11 So again, having considered all the arguments -- and
12 I do think that they're good arguments for a stay but I just
13 think the posture of this with this case being proceeding
14 first, I think we have an obligation, I think I have an
15 obligation to resolve the matters before the Court.

16 **MR. HARBOUR:** We appreciate that, Your Honor, and we
17 would be prepared to go to trial in March here.

18 **THE COURT:** Okay great, great. Let me hear from the
19 Defendants.

20 **MR. YODER:** Yes, Your Honor. I don't know that I
21 have anything to add on the motion to stay. We agree with the
22 Court, we understand the ruling.

23 I will just say we don't believe that we've taken
24 inconsistent positions and at the appropriate time we can
25 certainly address that to this Court if it's relevant here, may

1 not be. And we also are prepared to go to trial March 26th.

2 The only request that I would make, Your Honor, is if
3 we could do the final pretrial conference just the week before
4 because of scheduling issues, that would be appreciated.

5 **THE COURT:** So the week before would be the twenty --
6 so if we did the trial on the 26th, we would have the -- we'd
7 have the pretrial conference on the 18th? Does that make
8 sense?

9 **MR. YODER:** Yes, Your Honor.

10 **THE COURT:** Okay so the 18th. You okay, Mike?

11 **MR. YODER:** I am okay. A little embarrassed. I
12 don't know how red I am.

13 **THE COURT:** Okay.

14 **MR. YODER:** I don't think I've ever done that in 40
15 years, Your Honor, so I don't know.

16 **THE COURT:** Yeah. I'm just glad. There's no
17 personal injury lawyers in the room are there? Because --

18 **MR. YODER:** All you have to do is look at a billboard
19 on the freeway and you can find a lot of them.

20 **THE COURT:** It wasn't our fault, the chair wasn't our
21 fault. We didn't do anything to the chair.

22 And so let me talk to you a little bit about the
23 scope of what the evidence will be.

24 So we'll have this trial in March.

25 And obviously there are some things that the parties

1 are seeking to introduce into evidence that are not really
2 evidence. So for example, I think there was a request from
3 Netlist to introduce the argument from the Ninth Circuit into
4 evidence. And again, I don't know that lawyer argument is ever
5 really evidence and so I don't think that's something that we
6 would appropriately deal with.

7 From what I -- my initial thought is this -- and you
8 can tell me if I'm wrong is that there was discovery in this
9 case, discovery closed, and that's the world of evidence that
10 can be submitted into the trial. So the documents are in
11 discovery, the witnesses identified. Those things would come
12 in at trial but things that the parties may have stumbled
13 across after discovery closed would not come in to trial.

14 What are the parties thoughts on that? Starting with
15 the Plaintiff?

16 **MR. SHEASBY:** May it please the Court? Jason Sheasby
17 for Netlist. I think that is generally correct with the
18 following complication:

19 There is corporate testimony, corporate witness
20 testimony that was elicited. And by the way, I don't expect
21 the Court to rule on this now. We are going to be making a
22 motion on this, I don't think it's properly before you but it's
23 important for me to be transparent.

24 The only exception is there's corporate testimony
25 that occurred in East Texas that is directly relevant to the

1 issues before Your Honor. And of course in the Ninth Circuit
2 as well as in the Fifth Circuit, you can't contradict corporate
3 testimony even in different fora. And so we are going to be
4 making a motion for leave narrowly on this focused issue of
5 corporate testimony that was elicited in East Texas that we
6 think goes directly to the issues before Your Honor.

7 Now, there's two ways of handling that. One is
8 there's an open question as to whether that witness can in
9 effect be called through video and there's this which is what
10 the motion will be. And there's a second aspect to it which is
11 that if a corporate -- if their corporate representative were
12 to contradict what the corporate representative in East Texas
13 said, then there's an issue of impeachment. Obviously you can
14 impeach with issues that are not in evidence in front of Your
15 Honor. And so it seems to me the second issue is a prudential
16 issue that Your Honor will have to decide in the heat of cross
17 examination. The first issue will be subject to briefing that
18 we'll be making in front of Your Honor.

19 **THE COURT:** Is there -- just in reading the papers,
20 it seemed to -- there seems to be some issue with respect to
21 protective orders in Texas. Is this material? I just want to
22 make sure. As I'm sure you-all know, the courts, especially
23 the Eastern District, is very concerned about its orders being
24 followed with respect to protective orders. So to the extent
25 that you want to talk to this Court about something that's

1 under a protective order, make sure you get leave because I
2 don't want to -- again, I don't want to be disrespectful of the
3 court in Texas by considering information that I'm not allowed
4 to see.

5 **MR. SHEASBY:** Your Honor, I think that's absolutely
6 right. So what we'll need to do is we'll need to make a motion
7 in front of East Texas, as well as make a motion in front of
8 Your Honor. My expectation is the East Texas motion will file
9 that promptly so that that will be resolved in advance of our
10 briefing to you.

11 But I think that there's sort of two separate issues
12 here. One is in the sort of the reasonable execution of
13 justice, should this Court be aware of inconsistent 30(b) (6)
14 testimony taken involving the identical parties? And we think
15 that we'll ask Judge Gilstrap to allow you to at least see that
16 testimony. The second issue as to the way and form in which
17 you would allow that testimony to be used in the court which
18 will be squarely before Your Honor.

19 And so for me it's a matter of process. We can have
20 a principled debate as to whether what the 30(b) (6) witness has
21 said was inconsistent. That is a perfectly reasonable thing
22 for Your Honor to consider. The issue is we need to get off
23 the first base so that we can actually consider that. That is
24 squarely in front of Judge Gilstrap. We will make that motion
25 in front of Judge Gilstrap.

1 What I hope and as I hope that motion will be
2 unopposed because I can't imagine what would be the principled
3 basis for preventing Your Honor from at least considering what
4 the issues that we're concerned about are.

5 **THE COURT:** Who is your -- who are the local counsels
6 in Texas on this case?

7 **MR. SHEASBY:** Yes, Your Honor. So it's Melissa Smith
8 for Samsung. It's Sam Baxter and Jennifer Truelove for
9 Netlist. And Mr. Yoder has appeared in East Texas so everyone
10 in this courtroom that's sitting at this table knows what we're
11 talking about. The only person who doesn't know what we're
12 talking about is the person with the Article III appointment.

13 **THE COURT:** Okay, thank you.

14 The question was about scope of discovery and so let
15 me get the position from Samsung and then feel free to respond
16 to what Mr. Sheasby said.

17 **MR. YODER:** Sure, Your Honor.

18 Our position is, as the Court stated, discovery was
19 closed, this case is teed up, it's ready to go to trial based
20 upon the record that was developed before the summary judgment
21 rulings back in the day. We think that should be the record
22 that goes to trial. I think it's for Judge Gilstrap to decide
23 if there's a motion filed what he does with it so I have no
24 real comment on that.

25 I will say though that we very much disagree that

1 there was any testimony that was inconsistent. I would also
2 say that there were objections made to the deposition questions
3 that if it ever was to be considered, would have to be
4 resolved. And there's also an issue of fairness, quite
5 frankly, because discovery has been shut down on license breach
6 and license termination issues in the Eastern District of
7 Texas, so all of that would have to be sorted out I think if
8 Netlist were going to try to get leave from this Court to be
9 putting in evidence that wasn't part of the existing record.

10 **THE COURT:** Okay well I think I've got -- so this is
11 what we'll do here.

12 I'll issue an order on the pending motions before the
13 Court probably today if not tomorrow. As I said, I've been
14 through all the papers, I've got a pretty good sense as to what
15 I think is appropriate for the Court to do.

16 I'll be denying the Motion for a Stay. I'll be
17 denying the Summary Judgment motions because I believe there's
18 fact issues and we'll set the trial for March 26, with a final
19 pretrial conference on March 18th.

20 The trial filings -- I was originally thinking the
21 trial filings could be February 20th, the first round, and
22 February 27th, the second round, although we are allowing you
23 to have another week. So why don't we do the first round of
24 trial filings be due February 26th. Second round of trial
25 filings will be due March 4th. And the deadline to complete

1 the renewed Local Rule 16.2 conference is February 20th. So
2 the first round of trial filings, February 26th; second round,
3 March 4th, the Rule 16-2 conference will have to be done by
4 February 20th.

5 And so -- and I think we'll figure out how much time
6 each side will get. I know -- are the lawyers on this side new
7 to this case?

8 **MR. SHEASBY:** Yes, Your Honor.

9 **THE COURT:** Okay well welcome. We'll give each side
10 a number of hours and those hours will include opening, any
11 time you're questioning a witness -- either on direct or cross
12 examination -- and closing. We're going to make you save some
13 time for closing because sometimes lawyers will use up all
14 their time and then plead with the Court for more time for
15 closing. So we're going to make you save some time for closing
16 to avoid me having to look like the bad guy there. So we'll do
17 that. We'll figure out exactly how much time. I'll look at
18 what the parties file as some sort of guidance there to see how
19 many witnesses we're going to have but I think it's in
20 everybody's interest to get this done as efficiently and
21 quickly as possible.

22 We tend to we start our trial days at 8:30 in the
23 morning. This gives us time to kind of discuss things before
24 the jury comes in at 9:00. And I like to be very respectful of
25 the jury's time so I don't want to take too many breaks while

1 they're here, I want to make sure they don't feel like they're
2 being kind of given the runaround so we'll try to be pretty
3 diligent about what we do while the jury is here to make sure
4 that we're respecting their time.

5 And jury selection will be on the Tuesday morning.

6 I do the voir dire from the bench but I take ideas
7 from the parties with respect to questions. And then we can
8 always at sidebar or things if you feel that there's questions
9 that I haven't asked that you really think I should, you can
10 suggest them to me and we'll do that. But jury selection
11 should -- we should be have a jury in the morning certainly.

12 You know, civil case so we will have eight and so
13 that should be fairly straightforward. And opening statements,
14 we can do in the afternoon and so things will move on pretty
15 well.

16 Any questions from anybody about the trial?

17 **MR. SHEASBY:** No questions other than to say I know
18 how busy this court is and we are extremely grateful for the
19 trial setting you have given us. Thank you, Your Honor.

20 **THE COURT:** Well I want to make sure things can
21 proceed. I know how -- I know how Judge Gilstrap is about his
22 schedules and I know he's not going to want to move that trial
23 date. So since we can get it done, we got it done and so
24 that's how we'll move forward.

25 **MR. SHEASBY:** Thank you very much, Your Honor.

1 **THE COURT:** Anything else?

2 **MR. YODER:** I would just echo Counsel's sentiments,
3 Your Honor, very appreciative of the Court setting us. I think
4 it's good for all parties.

5 **THE COURT:** Yeah because this is one of my older
6 cases too so I want to try to see if I can't at least get it
7 off of my docket for now.

8 And I appreciate everybody coming up. With the
9 weather I'm sure it wasn't easy but it's always nice to think
10 -- to get everybody together in person I think and we're glad
11 we've got such professional lawyers on both sides. I mean very
12 well respected firms, very well respected lawyers. We should
13 be able to move these things along.

14 And again, if you've got issues that as we get into
15 the trial that the Court needs to resolve, let's get to it and
16 do it and work through it and do the best job we can. And then
17 if things get appealed, they get appealed but I think we can
18 move forward in a very efficient way.

19 (Attorneys thank the Court)

20 And I appreciate everybody else being here too.
21 Thank you for being here. We'll see you-all in March.

22 (**Proceeding adjourned at 11:27 a.m.**)

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.



February 6, 2024

Signed

Dated

TONI HUDSON, TRANSCRIBER